

BEFORE THE DEPARTMENT OF
NATURAL RESOURCES AND CONSERVATION
OF THE STATE OF MONTANA

IN THE MATTER OF APPLICATION FOR)
BENEFICIAL WATER USE PERMIT NO.) FINAL ORDER
17619-s43D BY RON ALLEN)

The Proposed Findings of Fact, Proposed Conclusions of Law and Proposed Order as entered by the Hearing Examiner on August 13, 1980 are hereby adopted as the Findings of Fact, Conclusions of Law and Final Order.

FINAL ORDER

1. Subject to the conditions and limitations listed below, Provisional Permit No. 17619-s43D by Ron Allen is hereby granted to appropriated 1.5 cubic feet per second of water, not to exceed 25 acre-feet per annum, from the West Fork of Rock Creek, a tributary of Rock Creek. The water is to be diverted into the Pryde Ditch at a point in the NW1/4 NE1/4 SE1/4 of Section 5, Township 8 South, Range 20 East, M.P.M., in Carbon County, Montana. The water is to be diverted from the Pryde Ditch and used for supplemental irrigation on a total of 25 acres, more or less, in the NE1/4 of Section 4, Township 8 South, Range 20 East, M.P.M., from April 1 to October 31, inclusive, of each year.

2. Provisional Permit No. 17619-s43D is granted subject to existing rights in the source of supply and any final determination of those rights as provided by Montana law.

3. This Provisional Permit is subject to the authority of court appointed Water Commissioners, if and when appointed, to measure and distribute to parties using water in the source of supply, the waters to which they are entitled, including the waters granted in this Provisional

1 Permit. The Permittee shall pay his proportionate share of fees and
2 compensation expenses, as fixed by the district court incurred in the
3 distribution of the waters granted in this Provisional Permit.

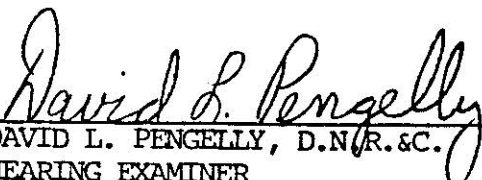
4 4. The Permittee shall install a suitable headgate or diversion
5 structure at the point the water is diverted from the source of supply.
6 The Permittee shall install an adequate flow measuring device at a
7 suitable place as near as practicable to the point where the water is
8 diverted from the source of supply, in order to record the flow rate and
9 volume of water diverted. The Permittee shall keep a written record of
10 the flow rate and volume of all waters diverted, including the period of
11 time and shall submit said records to the Department upon request.

12 5. Issuance of this Provisional Permit by the Department in no way
13 reduces the Permittee's liability for damages caused by the Permittee's
14 exercise of this Provisional Permit, nor does the Department in issuing
15 the Provisional Permit in any way acknowledge liability for damage
16 caused by the Permittee's exercise of the Provisional Permit.

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18 NOTICE

19 The Hearing Examiner's Final Order may be appealed in accordance
20 with the Montana Administrative Procedures Act by filing a petition in
21 the appropriate court within thirty (30) days after service of the Final
22 Order.

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24 DATED this 17th day of September, 1980.

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26 
27 DAVID L. PENGELLY, D.N.R. & C.
28 HEARING EXAMINER

BEFORE THE DEPARTMENT OF
NATURAL RESOURCES AND CONSERVATION
OF THE STATE OF MONTANA

IN THE MATTER OF APPLICATION FOR)
BENEFICIAL WATER USE PERMIT NO.) PROPOSAL FOR DECISION
17619-s43D BY RON ALLEN)

Pursuant to the Montana Water Use Act and the Montana Administrative Procedures Act, after due notice, a hearing was held on May 21, 1980, at Red Lodge, Montana, for the purpose of hearing objections to Application for Beneficial Water Use Permit No. 17619-s43D, David Pengelly, Hearing Examiner, presiding.

The Applicant, Ron Allen, appeared at the hearing and presented testimony in support of the Application. Mr. Allen was not represented by legal counsel. Four (4) exhibits were introduced in support of the Application, to wit:

Applicant's Exhibits:

A-1 Warranty deed for the Applicant's property.

A-2 Copy of pages 62 and 63 of the Carbon County Water Resources Survey.

A-3 Letter dated April 19, 1974, to Mr. Alvin Draper from Mr. W. S. Mather, Attorney at Law.

A-4 Copy of page 26 of the Carbon County Water Resources Survey, Map Section.

The Applicant's exhibits were introduced into the record with no objections.

The Objector, The Draper Ranch Company, was represented at the hearing by Mr. Ed Draper, and Mr. Toivo Lantta. No exhibits were introduced

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on behalf of the Objector. The Objector was not represented by legal counsel.

Montana Department of Natural Resources and Conservation personnel present at the hearing were Arlin Krogstad, Hearing Representative; Don Riddle, Billings Water Rights Bureau Field Office Manager; and Vicki Woodrow, Hearings Reporter. The Department was not represented by legal counsel. No exhibits were introduced on behalf of the Department.

SUMMARY OF RECORD

1. On December 5, 1977, the Department received Application for Beneficial Water Use Permit No. 17619-s43D by Ron Allen to appropriate 2.5 cubic feet per second or 1122 gallons per minute of water, not to exceed 25 acre-feet per annum from the West Fork of Rock Creek, a tributary of Rock Creek, by means of the Pryde Ditch, at a point in the NW1/4 NE1/4 SE1/4 of Section 5, Township 8 South, Range 20 East, M.P.M., Carbon County, Montana. The water is to be diverted from the Pryde Ditch, and used for supplemental irrigation on a total of 25 acres, more or less, in the NE1/4 of Section 4, Township 8 South, Range 20 East, M.P.M., from April 1 to October 31, inclusive, of each year.

2. On September 21, 28, and October 5, 1978, the Department caused to be duly published in the Carbon County News, Red Lodge, Montana, notice of Application for Beneficial Water Use Permit No. 17619-s43D.

3. On November 6, 1978, the Department received an objection to the above Application from the Draper Ranch Company, prepared by Laurence Draper.

PROPOSED FINDINGS OF FACT

Based on the transcript of the hearing and the information contained

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in the Department's file on this matter, it is found:

1. That the water to be diverted is excess water from the source of supply.
2. That the Applicant seeks to divert 1.5 cubic feet per second up to 25 acre-feet per annum.
3. That the prior appropriators in the source of supply would not be adversely by the granting of this Permit if the Permittee's water right is subject to the authority of the court appointed Water Commissioner.
4. That the Department does not have the authority to grant the Applicant a right to carry his water in the Pryde Ditch, as proposed in the Application.
5. That the proposed use of the water is a beneficial use.
6. That the proposed use will not interfere unreasonably with other planned uses or developments for which a permit has been issued or for which water has been reserved.

PROPOSED CONCLUSIONS OF LAW

1. Section 85-2-311, MCA, 1979, states that "The department shall issue a permit if:
 1. there are unappropriated waters in the source of supply:
 - a. at times when the water can be put to the use proposed by the applicant;
 - b. in the amount the applicant seeks to appropriate; and
 - c. throughout the period during which the applicant seeks to appropriate, the amount requested is available;
 2. the rights of a prior appropriator will not be adversely affected;

3. the proposed means of diversion or construction are adequate;
4. the proposed use of water is a beneficial use;
5. the proposed use will not interfere unreasonably with other planned uses or developments for which a permit has been issued or for which water has been reserved; . . ."

2. It is concluded that there are unappropriated waters in the source of supply at times when the water can be put to the use proposed by the Applicant; in the amount the Applicant seeks to appropriate; and throughout the period during which the Applicant seeks to appropriate, the amount requested is available.

3. Section 85-5-101, MCA, 1979, states in part, "The Commissioners shall have the authority to admeasure and distribute to the parties owning water rights in the source affected by the decree, the water to which they are entitled, according to their rights as fixed by the decree and by any certificates and permits issued under Chapter 2 of this Title."

4. It is concluded that the Permittee shall be under the jurisdiction of the Water Commissioner in this area.

5. It is concluded that the rights of prior appropriators will not be adversely affected by the granting of this permit.

6. It is concluded that the proposed use is a beneficial use.

7. It is concluded that the proposed means of diversion or construction are adequate.

8. It is concluded that the granting of this permit does not grant the Applicant the rights to use any diversion ditches owned by other parties.

9. It is concluded that the proposed use will not interfere unreasonably with other planned uses or developments for which a permit has been issued or for which water has been reserved.

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distribution of the waters granted in this Provisional Permit.

4. The Permittee shall install a suitable headgate or diversion structure at the point the water is diverted from the source of supply. The Permittee shall install an adequate flow measuring device at a suitable place as near as practicable to the point where the water is diverted from the source of supply, in order to record the flow rate and volume of water diverted. The Permittee shall keep a written record of the flow rate and volume of all waters diverted, including the period of time and shall submit said records to the Department upon request.

5. Issuance of this Provisional Permit by the Department in no way reduces the Permittee's liability for damages caused by the Permittee's exercise of this Provisional Permit, nor does the Department in issuing the Provisional Permit in any way acknowledge liability for damage caused by the Permittee's exercise of the Provisional Permit.

NOTICE

This Proposed Order is offered for the review and comment of all parties of record. The review and comment period shall commence with the service of this Proposed Order and shall end ten (10) days thereafter. No extensions of time for comment will be granted.

The Final Order in this matter will be sent to all parties by certified mail.

The Department's Final Order may be appealed in accordance with the Montana Administrative Procedures Act by filing a petition in the appropriate court within thirty (30) days after service of the Final Order.

DATED this 13th day of August, 1980.

David L. Pengelly

DAVID L. PENGELLY, D.N.R. & C.
HEARING EXAMINER

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